

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03 CV 52

ELAINE L. CHOA, Secretary of Labor, United
States Department of Labor,

Plaintiff,

v.

DATA PROCESSING SERVICES, INC.,
MARLENE MIDKIFF, an Individual, and the
DATA PROCESSING SERVICES, INC. 401(k)
PROFIT SHARING PLAN,

Defendants.

ORDER

THIS MATTER IS BEFORE THE COURT upon its own motion to terminate this action. The Complaint in this action was filed on February 7, 2003, pursuant to the Employee Retirement Income Security Act of 1974. On October 23, 2003, this Court entered Default Judgment against Defendant Data Processing Services, Inc., leaving only Marlene Midkiff and the Data Processing Services, Inc. 401(k) Profit Sharing Plan (the “Plan”) as defendants. On July 28, 2004, Plaintiff filed a Motion to Dismiss as to Defendant Marlene Midkiff, which this Court granted on August 6, 2004.

In her July 28, 2004 Motion to Dismiss, Plaintiff specifically stated that the “Plan was included as a necessary party to ensure complete relief could be granted.” (Pl.’s Mot. ¶ 1.) Further, the Complaint also provides that the “Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.” (Compl. at 4.) In addition, the Court notes that there are no allegations asserted against the Plan in the Complaint. The last activity in this case came when Defendant Marlene

Midkiff was dismissed from the action on August 6, 2004. Thus, a year and a half has passed with no activity in this case. Considering that fact and the fact that no allegations were asserted against the Plan, the final defendant will be dismissed from this action and the case will be closed.

IT IS THEREFORE ORDERED that Defendant Data Processing Services, Inc. 401(k) Profit Sharing Plan is hereby **DISMISSED** from this action. Further, the Clerk is directed to close this case file. The Clerk will send a copy of this Order to the parties at their addresses of record.

Signed: March 21, 2006



Richard L. Voorhees
Chief United States District Judge

